

NO. 46517-5-II

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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In re the Dependency of:

M.M., B.B., W.M. and B.H.,

Minor Children.

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ON APPEAL FROM THE  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR GRAYS HARBOR COUNTY

The Honorable David Edwards and the Honorable Gordon Godfrey

AMENDED OPENING BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. The superior court judge violated appellant Tamara Milligan's right to due process by failing to provide notice to her of entry of orders making "null and void" orders awarding attorney's fees in four dependency cases.

2. The lower court judge erred by entering orders in four dependency cases in June, 2014 making "null and void" an order granting attorney's fees entered by another superior court judge in September, 2011, in the absence of new or additional facts. Clerk's Papers (CP) 3, 18, 33, 48.

3. Entry of orders by Superior Court Judge David Edwards on June 16, 2014 making "null and void" four previously-entered orders for attorney's fees constitutes an abuse of discretion by the court. CP 3, 18, 33, 48.

4. Entry of orders by Superior Court Judge Gordon Godfrey on August 4, 2014 making "null and void" four previously-entered orders for attorney's fees constitutes as an abuse of discretion by the court. CP 4, 19, 34, and 49.

5. The lower court erred by denying the appellant's motion to vacate the orders pursuant to CR 60.

6. The lower court erred by entering an order on August 4, 2014

making previously authorized attorney's fees "null and void" without an authorizing order from the Court of Appeals in a matter in which a Notice of Appeal had been filed two weeks earlier.

**B. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Does an appellant's state and federal rights to due process prohibit a superior court judge from entering an order overruling an order entered by another judge without providing notice to the parties and an opportunity to be heard on the matter? Assignments of Error 1, 2, 3, and 4.

2. Is a superior court judge allowed to *sua sponte* enter an order overruling an order entered by another judge without providing notice to the parties and an opportunity to be heard on the matter? Assignments of Error 1, 2, 3, and 4.

3. Is a superior court judge permitted to enter an order overruling another judge's order in the absence of new or additional facts or evidence? Assignments of Error 1, 2, 3, and 4.

4. May a superior court judge enter an order vacating an existing order in the absence of motion, supporting affidavit, and notice to the parties? Assignments of Error 1, 2, 3, and 4.

5. May a superior court judge enter an order vacating an existing

order more than one year after the order was entered? Assignments of Error 3 and 4.

6. Did the lower court err in denying the appellant's motion to vacate the orders denying fees where she was denied due process in that she was not given notice of entry of the orders and denied an opportunity to be heard, and where the court lacked inherent jurisdiction over the matter? Assignment of Error 5.

7. Under RAP 7.2(e), once the appellant has filed a timely Notice of Appeal, does the trial court have the authority to enter an order regarding the precise facts being appealed without obtaining permission from the Court of Appeals? Assignment of Error 6.

### **C. STATEMENT OF THE CASE**

Former attorney Tamara Milligan<sup>1</sup> served as assigned counsel in dependency cases in Grays Harbor County Superior Court for a number of years. On September 12, 2011, Ms. Milligan submitted proposed orders for payment for work performed in four dependency cases: *In re Dependency of M.M.*,<sup>2</sup> *In re the Dependency of B.B.*,<sup>3</sup> *In re the Dependency of W.M.*,<sup>4</sup> and *In*

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<sup>1</sup> Ms. Milligan closed her law practice in December 2011.

<sup>2</sup> Grays Harbor County Cause No. 05-7-00328-1.

<sup>3</sup> Grays Harbor County Cause No. 09-7-00092-6.

<sup>4</sup> Grays Harbor County Cause Nos. 10-7-00352-0, 10-7-00353-8, and 10-7-00354-6.

*re the Dependency of B.H.*<sup>5</sup> Clerks Papers (CP) 1-2, 16-17, 31-32, 46-47; Attachments A-D. The Honorable Gordon Godfrey signed orders in the four cases titled Order For Payment of Guardian Ad Litem Fees and Establishing a Judgment Dependency Matter for attorney fees. The orders directed that fees be paid to Ms. Milligan in each of the dependency cases. Attachments A-D. The fees authorized by Judge Godfrey in the September 12, 2011 orders were as follows:

Name of case	Amount ordered on 9/12/2011	CP
<i>In re M.M.</i>	\$ 6,624.00	1-2
<i>In re B.B.</i>	\$ 2,496.00	16-17
<i>In re W.M.</i>	\$ 4,422.00	31-32
<i>In re B.H.</i>	\$11,454.00	46-47
<b>Total amount</b>	<b>\$24,996.00</b>	

To correct an apparent scrivener's error, the orders pertaining to M.M., W.M., and B.H. were amended by Judge Godfrey on September 12, 2011, lining out the reference to Guardian ad Litem and interlineating the phrase "attorney fees." Attachments A,B, and D.

Despite the orders entered in each of the relevant dependency files, the Grays Harbor County Auditor's Office did not issue payment to Ms. Milligan.

In June 2014, Ms. Milligan determined the orders were inexplicably

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<sup>5</sup> Grays Harbor County Cause No. 11-7-00078-1.

missing and apparently removed from each respective dependency court file. Ms. Milligan had certified copies of the orders, which she resubmitted to the Court Clerk for payment of the fees approved by Judge Godfrey in September, 2011. Each resubmitted order was assigned a new "sub number" by the Court Clerk and designated as filed on September 12, 2011. CP 1-2, 16-17, 31-32, 46-47.

On June 16, 2014, without notice to Ms. Milligan, Superior Court Judge David Edwards placed an order in each of the cases titled "Order Making Attorney Fees Null and Void." Each order states in relevant part:

The Order entered on September 12, 2011 ordering attorney fees is null and void. If Ms. Milligan-Darst wishes for the court to entertain a request for attorney fees she can properly note it on the motion docket with supporting documentation of her hours.

CP 3, 18, 33, 48. Attachment E.

Notice of Appeal was filed July 15, 2014 in each of the dependency cases. Supplemental CP (SCP) \_\_\_\_.

On August 4, 2014, following the filing of Notice of Appeal, again without notice to the appellant or her counsel, orders were filed by Judge Godfrey in *M.M. B.B.*, *W.M.*, and *B.H.* containing identical language as that contained in the orders filed by Judge Edwards on June 16, 2014. CP 4, 19, 34, and 49. Attachment F.

Following entry of the orders, Ms. Milligan's counsel filed suit on September 19, 2014 against Grays Harbor County, seeking payment of the fees and damages.<sup>6</sup>

On September 24, 2014, pursuant to Civil Rule 60, counsel for Ms. Milligan moved to vacate the orders entered August 4, 2014. CP 50-52. Counsel filed an Affidavit of Prejudice against Judge Edwards. SCP \_\_\_\_\_. On September 26, 2014, appellant's counsel gave notice of his intent to strike the hearing, which was set for October 6, 2014. SCP \_\_\_\_\_. Despite counsel's notice to strike, Judge Edwards denied the initial CR 60 motion in an order filed October 1, 2014. CP 11-12, 26-27, 41-42, 64-65. The order denying motion to vacate Judge Godfrey's order making attorney fees null and void references a declaration filed by Judge Godfrey on October 1, 2014. In his declaration, Judge Godfrey stated that after the initial orders were signed, Court Administrator Bonnie Kindle advised that the fee requests were not timely filed and stemmed from work "allegedly performed by Ms. Milligan over a period of two or more years, which was going to cause budget problems for the Superior Court." CP 14, 29, 44, 67. Judge Godfrey stated in his declaration that he met with Ms. Milligan in September 2011 in the jury room at the courthouse to file documentation supporting the requested fees and that the orders would not be processed for payment until she

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<sup>6</sup> That matter remains unresolved.

submitted affidavits in support of the same. CP 14, 29, 44, 67. He stated that Ms. Milligan did not submit affidavits in support of her “fee requests” and “as a consequence of her failure to comply with the court’s directions, the orders for payment were never submitted to the Grays Harbor County Auditor,”<sup>7</sup> directly in contradiction to the orders signed on September 12, 2011.

This appeal follows.

**D. ARGUMENT**

1. THE SUPERIOR COURT DENIED THE APPELLANT HER RIGHT TO DUE PROCESS BY ENTERING ORDERS RENDERING PREVIOUSLY-ENTERED ORDERS FOR ATTORNEY’S FEES TO BE “NULL AND VOID”

Appellant Tamara Milligan’s orders for payment of attorney’s fees in the total amount of \$24,996.00 were signed by Judge Godfrey on September 12, 2011. Ms. Milligan did not receive payment and learned in 2014 that the orders for attorney’s fees were not in the court file. Ms. Milligan had certified copies of the previously-entered orders, which she resubmitted to the court for entry in the file. The certified copies of the four orders were placed in their respective files on June 2, 2014. CP 1-2, 16-17, 31-32, 46-47. Without providing notice to Ms. Milligan, Judge Edwards *sua sponte* entered

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<sup>7</sup> CP 14, 29, 44, 67.

an Order Rendering Attorney Fees Null and Void on June 16, 2014. CP 3, 18, 33, 48.

Ms. Milligan filed notice of appeal of the court's order on July 15, 2014. SCP \_\_\_\_.

Orders identical to those filed by Judge Edwards appeared in the court file in each dependency case on August 4, 2014, signed by Judge Godfrey. CP 4, 19, 34, and 49. Again, no notice was provided to Ms. Milligan.

Entry of the orders on June 16, 2014 constitutes a denial of due process; Ms. Milligan was not informed of the court's action and was given no opportunity to contest entry of the orders. The error was compounded by the second set of identical orders filed August 4, 2014, this time by Judge Godfrey.

Due process protects a person from State action depriving that person of life, liberty or property. The federal and Washington State Constitution contain identical clauses prohibiting the State from depriving any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV; Const. art. I, § 3; *Carlstrom v. Hanline*, 98 Wn.App. 780, 789–90, 990 P.2d 986 (2000). These clauses provide coextensive protections. *State v. Jordan*, 180 Wn.2d 456, 462, 325 P.3d 181 (2014). Accordingly, no *Gunwall* analysis

is required.<sup>8</sup>

The two touchstones of procedural due process are notice and the opportunity to be heard. *King County Pub. Hosp. Dist. No. 2 v. Dep't of Health*, 178 Wash.2d 363, 380, 309 P.3d 416 (2013). Notice must be reasonably calculated to inform interested parties of an action against them and give them the ability to make an appearance on their own behalf. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). A party's opportunity to be heard must be meaningful both in time and manner. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).; *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 224, 829 P.2d 1099 (1992); *Bang Nguyen v. Dep't of Health Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 522–23, 29 P.3d 689 (2001). The fundamental requirement of due process is notice and the opportunity to be heard. *Mathews*, 424 U.S. at 333, 96 S.Ct. at 902; *Soundgarden v. Eikenberry*, 123 Wash.2d 750, 768, 871 P.2d 1050, *cert. denied*, 513 U.S. 1056, 115 S.Ct. 663, 130 L.Ed.2d 598 (1994).

To have a property interest in a benefit, a person clearly must have more than an abstract need or generalized desire for it. She must have more than a unilateral expectation of it. She must, instead, have a legitimate claim of entitlement to it. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564,

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<sup>8</sup>*State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986)

577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Such an interest is not created by the constitution, but by state law. *Roth*, 408 U.S. at 577, 92 S.Ct. 2701.

**a. Ms. Milligan had a property interest in being compensated for her work as an attorney in the dependency cases.**

Here, the court provided no notice to Ms. Milligan and no opportunity to argue against the June 16, 2014 or August 4, 2014 orders. Ms. Milligan contracted with Grays Harbor County to provide legal services for indigent parents and minors involved in matters brought pursuant to Chapter 13.36 RCW. Ms. Milligan performed the work in question, which was initially approved by Judge Godfrey, and she was reasonable in her expectation of being compensated for the work that she provided representing indigent parents and children. She believed that an order authorizing the fees was entered in September, 2011. Instead, the order was without explanation removed from the court file after entry. Ms. Milligan retained certified copies of the filed orders, which she subsequently refiled.

Prior to the entry of the orders by Judge Edward and Judge Godfrey on June 16 and August 4, 2014, respectively, Ms. Milligan was not afforded a right to present information or argue against the propriety of the orders ruling that the fees were now determined to be “null and void.”

No action taken by the trial court after the fact of entry of the orders can cure the lack of notice to Ms. Milligan. The lack of notice did not afford Ms. Milligan her state and federal constitutional due process protection against the erroneous deprivation of her rights. This is not a question of inadequate notice; here simply no notice of the actions by the judges was given. Therefore, the orders entered June 16, 2014 and August 4, 2014 in each of the four cases must be vacated. See e.g. *State v. Green* 157 Wn. App. 833, 239 P.3d 1130 (2010).

2. IN A CASE OF FIRST IMPRESSION, ONE SUPERIOR COURT JUDGE SHOULD NOT BE PERMITTED TO OVERRULE ANOTHER SUPERIOR COURT IN THE ABSENCE OF NEW EVIDENCE

In this case, one superior court judge overruled orders issued by another superior court judge. Judge Godfrey ordered attorney fees to be paid to the appellant in September, 2011. The orders were *sua sponte* ordered “null and void” by Judge Edwards in June, 2014. Judge Edwards lacked jurisdiction to overrule or otherwise modify Judge Godfrey’s orders in the absence of new evidence and in the absence of notice being provided to the relevant parties. Otherwise, allowing another judge to overrule another

superior court judge places the second judge in the role of a one-judge appellate court.

A diligent search of Washington case law reveals no cases on point which address this issue, and undersigned counsel believes this to be a case of first impression.

The appellant submits that the holdings of courts in California and North Carolina are instructive. Courts in California have held that one department of a superior court cannot interfere with the jurisdiction of another. *Martin-Bragg v. Moore*, 219 Cal.App.4th 367 (2013) (citing *Ford v. Superior Court*, 188 Cal.App.3d 737, 742. (1986)).

In *Ford*, the superior court entered judgment in a cause, consisting in part of an order regarding the disposition of documents made part of the record at trial. The court declared that some documents could not be returned to the litigants in the action, and ordered that some documents remain sealed, while others were available for public inspection and comment. Plaintiffs, who were not parties to the original action but alleged they were persons named in these documents, sought an injunction in another department of the superior court to restrain execution of the part of the judgment relating to the disposition of the documents. The reviewing court affirmed the order of the

second superior court dismissing plaintiffs' action. It reasoned that because the superior court is but one court, one department of a superior court cannot review and restrain the judgment entered by another department. Accordingly, it concluded that "judgment rendered in one department of the superior court is binding on that matter upon all other departments until such time as the judgment is overturned." *Ford*, 188 Cal.App.3d 737, 742.

Another California court held that an order, when rendered by one judge, cannot be freely overturned by another judge of the same court. *Curtin v. Koskey*, 231 Cal.App.3d 873, 876, 282 Cal.Rptr. 706 (1991) ("one trial court judge may not reconsider and overrule a ruling of another judge").

In North Carolina, courts have consistently held that one superior court judge may not "modify, overrule, or change the judgment of another Superior Court judge previously made in the same action" unless a substantial change in circumstance has occurred during the interim. *State v. Woolridge*, 357 N.C. 544, 549–50, 592 S.E.2d 191, 194 (2003) (quoting *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972)). North Carolina case law provides that the only exception to the rule are cases in which "the original order was (1) interlocutory, (2) discretionary, and (3) there has been a substantial change of circumstances since the entry

of the prior order.” *Crook v. KRC Mgmt. Corp.*, 206 N.C.App. 179, 189, 697 S.E.2d 449, 456 (2010). “A substantial change in circumstances exists if since the entry of the prior order, there has been an intervention of new facts which bear upon the propriety of the previous order. *Id.*, 206 N.C.App. at 190, 697 S.E.2d at 457. See also, ONE JUDGE OVERRULING ANOTHER, Crowell, Michael, University of North Carolina at Chapel Hill, School of Government, Administration of Justice Bulletin, May 2008.

Here, Judge Edwards acted without authority in overruling the order entered by Judge Godfrey three years earlier. Had Judge Godfrey initially denied the appellant’s motions for fees in the four cases, Ms. Milligan would have been precluded from simply going to Judge Edwards and making the same request. Instead, she would have been restricted to seeking reconsideration of Judge Godfrey’s decision and then appealing to this Court. Conversely, Judge Edwards should be precluded from overruling the 2011 orders signed by another superior court judge in the absence of notice and in the absence of new or additional evidence.

A policy preventing one judge from modifying or vacating an order by another judge in the same court serves to preserve judicial economy serves to avoid rearguing the same issues before multiple judges, and also prevents

judge shopping. Accordingly, the appellant urges this Court to adopt the doctrine followed by California and North Carolina to prevent one superior court judge from overruling another in the absence of specific circumstances such as the introduction of new evidence.

3. **THE COURT LACKED JURISDICTION TO  
VACATE OR OVERTURN THE ORDERS**

Judge Edwards' orders in the dependency cases were entered approximately three years after they were filed in September, 2011. The authority to vacate a judgment is contained in CR 60. CR 60(b) provides that a "court may relieve a party ... from a final judgment, order, or proceeding" under specified circumstances.

A CR 60(b) motion must be brought "within a reasonable time," and for CR 60(b)(1)-(3), "not more than 1 year" after the default order or judgment is entered. This one year time limit is strictly enforced and the trial court may not extend the deadline. *See* CR 60(b).

Here, assuming *arguendo* that the court's orders were filed pursuant to CR 60, the various orders of June 16 and August 4 were untimely if brought pursuant to CR 60(b)(1) through (3), and no grounds were presented to extend the time if under another provision of the Court Rule.

Moreover, the court did not follow the procedure promulgated by CR 60 in order to vacate the prior order. CR 60 provides the procedure by which a judgment may be vacated. A party must file a motion stating the grounds for the requested relief, supported by an affidavit, "setting forth a concise statement of the facts or errors upon which the motion is based ...." CR 60(e)(1). CR 60(e)(2) provides, "Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted ."

Here, the court utterly failed to follow the applicable superior court rules in vacating or overruling the prior orders. The remedy in this case is to vacate the orders declaring the orders of September 12, 2011 "null and void" and reinstate the original orders for payment of fees.

4. **THE LOWER COURT ERRED BY DENYING  
MS. MILLIGAN'S CR 60 MOTION TO  
VACATE THE ORDERS**

CR 60 provides authority for courts to relieve parties from court orders. CR 60(b) provides in relevant part that an order or judgment may be vacated due to:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in

obtaining a judgment or order;

....

(4) Fraud (whether heretofore denominated intrinsic or extrinsic),  
misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void; {or}

...

(11) Any other reason justifying relief from the operation of the  
judgment.

CR 60(b)(5) provides that a court may relieve a party from a final judgment if the judgment is void. Decisions on motions to vacate are reviewed for abuse of discretion. *State v. Santos*, 104 Wn.2d 142, 145, 702 P.2d 1179 (1985). A trial court abuses its discretion when it exercises it on untenable grounds or for manifestly unreasonable reasons. *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971). A court also abuses its discretion when it applies the wrong legal standard. *State v. Rafay*, 167 Wn.2d 644, 655, 222 P.3d 86 (2009). Default judgments are not favored since they prevent controversies from being resolved on the merits. *Housing Auth. of Grant County v. Newbigging*, 105 Wash.App. 178, 19 P.3d 1081 (2001).

Here, the judgment was void due to lack of notice under CR 60(b)(5).

A judgment is void when the court lacks jurisdiction of the parties, lacks jurisdiction of the subject matter, or lacks the inherent power to enter the particular order involved. *Bresolin v. Morris*, 86 Wn.2d 241, 245, 543 P.2d 325 (1975), *supplemented*, 88 Wn.2d 167, 558 P.2d 1350 (1977). When a judgment is void, a court has a nondiscretionary duty to vacate. *In re Marriage of Leslie*, 112 Wn.2d 612, 618–19, 772 P.2d 1013 (1989). In this case, counsel for Ms. Milligan moved to vacate the orders, arguing *inter alia* that Ms. Milligan was not notified of entry of the June 16 and August 4, 2014 orders until after they were entered. The fact that that orders were entered without notice essentially creates a default order.

Where a court lacks jurisdiction over the parties or the subject matter, or lacks the inherent power to make or enter the particular order, its judgment is void. *State ex rel Turner v. Briggs*, 94 Wash.App. 299, 302–03, 971 P.2d 581 (1999). A judgment entered in violation of due process is void. *State ex rel. Adams v. Superior Court, Pierce County*, 36 Wn.2d 868, 872, 220 P.2d 1081 (1950). Due process requires at a minimum notice and an opportunity to be heard. *Morley v. Morley*, 131 Wash. 540, 230 P. 645 (1924). Here, it is uncontroverted that Ms. Milligan was not afforded an opportunity to be heard regarding the orders of June 16 and August 4, 2014.

In addition, Ms. Milligan submits that the orders entered by the court are void because the initial orders June 16 and August 4, 2014 exceed the “inherent power of the court.” *Metro. Fed. Sav. & Loan Ass'n of Seattle v. Greenacres Mem'l Ass'n*, 7 Wn.App. 695, 699, 502 P.2d 476 (1972). As argued *supra*, the court lacked jurisdiction to amend the orders under CR 60 because the orders were not overruled or vacated within a reasonable time. Instead, the judges’ orders declaring the orders “null and void” were entered, seemingly *sua sponte*, three years after the initial entry in 2011. The order does not cite a basis for denying the orders three years after entry. Therefore, the court erred by denying the appellant’s CR 60 motion. The orders entered June 16 and August 4, 2014 should be vacated.

5. THE LOWER COURT LACKED JURISDICTION TO ENTER THE ORDERS OF AUGUST 4, 2014, AND ORDER DENYING MOTION TO VACATE ON OCTOBER 1, 2014, AFTER MS. MILLIGAN FILED A NOTICE OF APPEAL

The trial court loses authority to act in a case, with limited exceptions, once the appellate court has accepted review. RAP 7.2(a). RAP 7.2(e) explicitly requires the superior court to obtain permission from the appellate court before making any determination that would “change a decision then being reviewed by the appellate court.

One exception permits the trial court to hear and decide a post-judgment motion to modify a decision, but "[i]f the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision." RAP 7.2(e).

Here, Ms. Milligan's notice of appeal specifies the order of June 16, 2014 as a subject of the review she sought in the Court of Appeals. SCP \_\_\_\_\_. After Ms. Milligan perfected her appeal, the lower court nevertheless continued to take action in the case. Judge Godfrey issued orders on August 4, 2014 that were identical to those issued by Judge Edwards on June 16, rendering the attorney's fees "null and void." As was the case with the June 16 order, notice was not provided to Ms. Milligan of the issuance of the orders. Counsel for Ms. Milligan initially moved pursuant to CR 60 to vacate the orders, but subsequently gave notice of his intent to strike the motion. Counsel also filed an affidavit of prejudice against Judge Edwards. SCP \_\_\_\_\_. Despite the notice to strike the motion and the affidavit of prejudice, Judge Edwards nevertheless ruled on the motion and denied the appellant's motion to vacate the orders. CP 11-12, 26-27, 41-42, 64-65.

Here, the lower court did not have the permission of the Court of

Appeals to issue the orders of August 4, 2014, or the Order Denying the CR 60 motion entered October 1, 2014, as required by RAP 7.2. Accordingly, the court's orders of August 4, 2014 finding the order of September 12 null and void, and the orders denying the appellant's CR 60 motion are ineffective absent an order by the Court of Appeals granting permission for entry of the orders.

6. **REQUEST FOR ATTORNEY FEES**

Ms. Milligan is entitled to her reasonable attorneys fees on appeal pursuant to RAP 18.1, which permits attorney fees on appeal if applicable law grants the party the right to recover reasonable attorney fees.

A careful assessment of Ms. Milligan's financial need, as will be described in her RAP 18.1(c) affidavit, supports the conclusion that she should recover her fees on appeal.

Additionally, appellate courts assess the merits of the parties' issues raised on appeal. *In re Marriage of Booth*, 114 Wn.2d 772, 729-80, 791 P.2d 519 (1990); *In re marriage of C.M.C.*, 87 Wn.App. 84, 89, 940 P.3d 669 (1997). Ms. Milligan has presented legitimate and compelling issues to this Court to resolve. A fee award is merited.

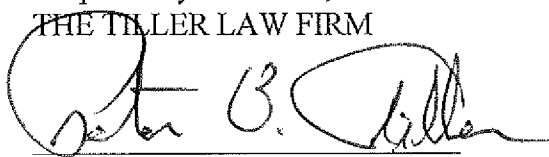
**E. CONCLUSION**

The action by Judge Edward of entering an order overruling an order by another superior court judge without providing notice to the parties was a violation of the appellant's right to due process. In addition, both Judge Edwards and Judge Godfrey were acting without jurisdiction when they each entered almost identical orders declaring the three year old orders for attorney's fees to be "null and void." Moreover, Judge Edwards abused his discretion by denying the appellant's CR 60 motion to vacate the orders entered where the appellant had filed an Affidavit of Prejudice, moved to strike the motion, and had filed Notice of Appeal to this Court.

The appellant has limited finances. As such she should be awarded reasonable attorney's fees for the necessity of bringing this appeal.

DATED: May 26, 2015.

Respectfully submitted,  
THE TILLER LAW FIRM

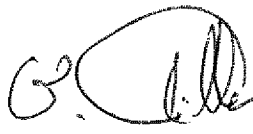

A handwritten signature in black ink, appearing to read "Peter B. Tiller", is written over a horizontal line.

PETER B. TILLER-WSBA 20835  
Of Attorneys for Tamara Milligan

## CERTIFICATE OF SERVICE

The undersigned certifies that on May 26, 2015, that this Amended Opening Brief was e-filed by JIS Link to the Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and copies were mailed by U.S. mail, postage prepaid to Ms. Jennifer Wieland, Grays Harbor Prosecuting Attorneys Office, 102 W. Broadway, Room 102, Montesano, WA 98563, and Ms. Tamara Milligan, 850 Wildwood Court, Montesano, WA 98563.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on May 26, 2015.

  
PETER B. TILLER

## RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in

obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

**(c) Other Remedies.** This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

**(d) Writs Abolished--Procedure.** Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**(e) Procedure on Vacation of Judgment.**

(1) *Motion.* Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) *Notice.* Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) *Service.* The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) *Statutes.* Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

## **RULE 7.2. AUTHORITY OF TRIAL COURT AFTER REVIEW ACCEPTED**

**(a) Generally.** After review is accepted by the appellate court, the trial court has authority to act in a case only to the extent provided in this rule, unless the appellate court limits or expands that authority as provided in rule 8.3.

**(b) Settlement of Record.** The trial court has authority to settle the record as provided in Title 9 of these rules.

**(c) Enforcement of Trial Court Decision in Civil Cases.** In a civil case, except to the extent enforcement of a judgment or decision has been stayed as provided in rules 8.1 or 8.3, the trial court has authority to enforce any decision of the trial court and a party may execute on any judgment of the trial court. Any person may take action premised on the validity of a trial court judgment or decision until enforcement of the judgment or decision is stayed as provided in rules 8.1 or 8.3.

**(d) Attorney Fees and Litigation Expenses On Appeal.** The trial court has authority to award attorney fees and litigation expenses for an appeal in a marriage dissolution, a legal separation, a declaration of invalidity proceeding, or an action to modify a decree in any of these proceedings, and in any other action in which applicable law gives the trial court authority to do so.

**(e) Postjudgment Motions and Actions to Modify Decision.** The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion. The decision granting or denying a postjudgment motion may be subject to review. Except as provided in rule 2.4, a party may only obtain review of the decision on the postjudgment

motion by initiating a separate review in the manner and within the time provided by these rules. If review of a postjudgment motion is accepted while the appellate court is reviewing another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in rule 3.3(b).

**(f) Release of Defendant in Criminal Case.** In a criminal case, the trial court has authority, subject to RCW 9.95.062 and .064, to fix conditions of release of a defendant and to revoke a suspended or deferred sentence.

**(g) Questions Relating to Indigency.** The trial court has authority to decide questions relating to indigency as provided in Title 15 of these rules.

**(h) Supersedeas, Stay, and Bond.** The trial court has authority to act on matters of supersedeas, stays, and bonds as provided in rules 8.1 and 8.4, CR 62(a), (b), and (h), and RCW 6.17.040.

**(i) Attorney Fees, Costs and Litigation Expenses.** The trial court has authority to act on claims for attorney fees, costs and litigation expenses. A party may obtain review of a trial court decision on attorney fees, costs and litigation expenses in the same review proceeding as that challenging the judgment without filing a separate notice of appeal or notice for discretionary review.

**(j) Juvenile Court Decision.** The trial court has authority to enter findings and conclusions in a juvenile offense proceeding pursuant to JuCR 7.11. The trial court has authority to act on matters of supersedeas, stays, bonds, the release of a person, and extension of jurisdiction pending review of a juvenile court proceeding.

**(k) Perpetuation of Testimony.** The trial court has authority to supervise discovery proceedings pursuant to CR 27.

**(l) Multiple Parties, Claims, or Counts.** If the trial court has entered a judgment that may be appealed under rule 2.2(d) in a case involving multiple parties, claims, or counts, the trial court retains full authority to act in the portion of the case that is not being reviewed by the appellate court.

Attachments for  
COA No. 46517-5-II  
Amended Operating Brief

## ATTACHMENT A

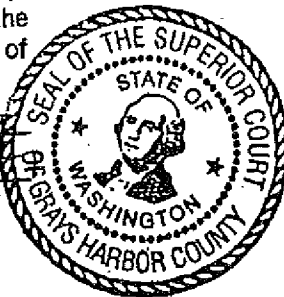
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Certificate of Clerk of the Superior Court of Washington in and for Grays Harbor County. The above is a true and correct copy of the original instrument which is on file or of record in this court.

FILED  
GRAYS HARBOR COUNTY  
C. BROWN, CLERK

2011 SEP 12 PM 4:03

Done this SEP 12 2011 day of SEP  
Cheryl Brown, Clerk By [Signature] Deputy Clerk



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRAYS HARBOR COUNTY

In Re:

Melissa McGarty

NO. 05-7-328-1 Att. Gen.  
ORDER FOR PAYMENT OF  
GUARDIAN AD LITEM FEES AND  
ESTABLISHING A JUDGMENT  
~~DEPENDENCY MATTER~~

I. JUDGMENT SUMMARY (15 MONTH STATEMENT)

Does not apply. This is a dependency matter (RCW 13.34) and public funds are mandated. ~~REP~~ Billing includes REPRESENTATION OF MINOR THROUGH NEAR FATAL OVERDOSE.

II. BASIS

2.1 The Court appointed Guardian ad Litem has submitted an Order for payment of fees and it appears that it should be paid by the County and that the County as public funds are mandated by statute.

III. ORDER

3.1 The Grays Harbor County Auditor is directed to pay  
\$ 6,624.00 to Tamara J. Milligan Darst for ~~Guardian ad Litem~~ <sup>ATTORNEY</sup> fees in this action.

DATED: 9.12.2011

[Signature]  
JUDGE

ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 1

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98563  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

1 Presented by:

2  
3 DARST LAW OFFICE  
4 Guardian ad Litem

5  
6 By

7 Tamara J. Milligan  
8 WSBA #21881  
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ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 2

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98563  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

## ATTACHMENT B

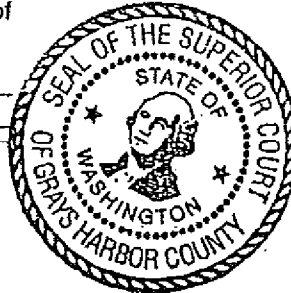
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FILED  
GRAYS HARBOR COUNTY  
C. BROWN, CLERK

2011 SEP 12 PM 4:04

Certificate of Clerk of the Superior Court of  
Washington in and for Grays Harbor County.  
The above is a true and correct copy of the  
original instrument which is on file or of  
record in this court.

Done this SEP 12 2011 day of SEP  
Cheryl Brown, Clerk By [Signature]  
Deputy Clerk



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRAYS HARBOR COUNTY

In Re:

BRYAN BECKHAM

NO. 09-7-92-6

ORDER FOR PAYMENT OF  
GUARDIAN AD LITEM FEES AND  
ESTABLISHING A JUDGMENT  
DEPENDENCY MATTER

I. JUDGMENT SUMMARY (13 MONTH STATEMENT)

Does not apply. This is a dependency matter (RCW 13.34) and public funds are  
mandated

II. BASIS

2.1 The Court appointed Guardian ad Litem has submitted an Order for payment of  
fees and it appears that it should be paid by the County and that the County as public funds are  
mandated by statute.

III. ORDER

3.1 The Grays Harbor County Auditor is directed to pay  
\$ 2,496.00 to Tamara J. Milligan Darst for ~~Guardian ad Litem~~ <sup>ATTORNEY</sup> fees in this  
action.

DATED: 9.12.2011

[Signature]  
JUDGE

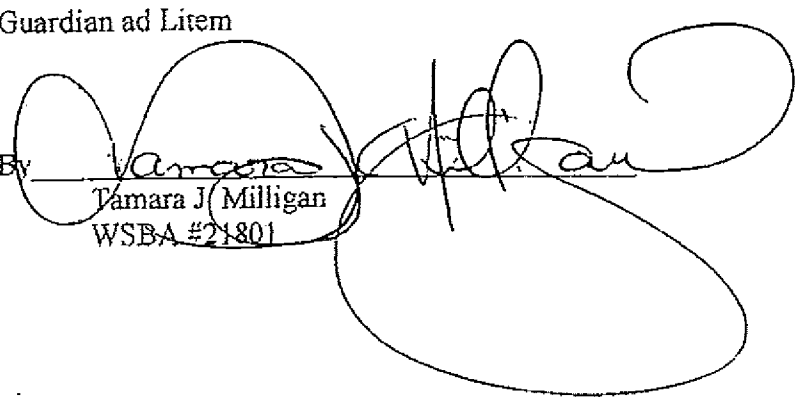
ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 1

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98563  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

1 Presented by:

2  
3 DARST LAW OFFICE  
4 Guardian ad Litem

5  
6 By

  
7 Tamara J. Milligan  
8 WSBA #21801

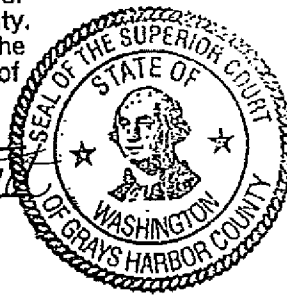
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ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 2

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98563  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

## ATTACHMENT C

Certificate of Clerk of the Superior Court of Washington In and for Grays Harbor County. The above is a true and correct copy of the original instrument which is on file or of record in this court.

Done this SEP 12 2011 day of September  
Cheryl Brown, Clerk By [Signature]  
Deputy Clerk



FILED  
GRAYS HARBOR COUNTY  
C. BROWN, CLERK

2011 SEP 12 PM 4:01

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRAYS HARBOR COUNTY

*Arty fees*

In Re:

*WOOSLEY MINORS*

*Amended*

NO. 10-7-352-0  
10-7-353-8  
10-7-354-6

ORDER FOR PAYMENT OF  
GUARDIAN AD LITEM FEES AND  
ESTABLISHING A JUDGMENT  
DEPENDENCY MATTER

I. JUDGMENT SUMMARY (13 MONTH BILLING)

Does not apply. This is a dependency matter (RCW 13.34) and public funds are mandated.

II. BASIS

2.1 The Court appointed Guardian ad Litem has submitted an Order for payment of fees and it appears that it should be paid by the County and that the County as public funds are mandated by statute.

III. ORDER

3.1 The Grays Harbor County Auditor is directed to pay  
\$ 4422.<sup>00</sup> to Tamara J. Milligan Darst for ~~Guardian ad Litem~~ <sup>ATTORNEY</sup> fees in this  
action.

DATED: 9.12.2011

[Signature]  
JUDGE

ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 1

40

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98563  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

1 Presented by:

2  
3 DARST LAW OFFICE  
4 Guardian ad Litem

5  
6 By 

7 Tamara J. Milligan  
8 WSBA #21801  
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ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 2

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98563  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

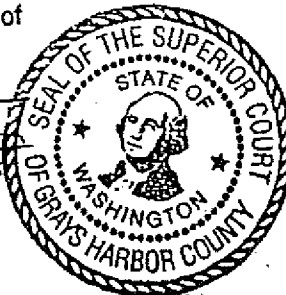
## ATTACHMENT D

FILED  
GRAYS HARBOR COUNTY  
C. BROWN, CLERK

2011 SEP 12 PM 4:06

Certificate of Clerk of the Superior Court of  
Washington in and for Grays Harbor County.  
The above is a true and correct copy of the  
original instrument which is on file or of  
record in this court.

Done this SEP 12 2011 day of Sept  
Cheryl Brown, Clerk By [Signature] Deputy Clerk



*Pro*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRAYS HARBOR COUNTY

In Re:

Blake Helms

NO. 11-7-73-1

*Amend*  
ORDER FOR PAYMENT OF  
GUARDIAN AD LITEM FEES AND  
ESTABLISHING A JUDGMENT  
DEPENDENCY MATTER (8 MONTHS  
TIME BILLING)

I. JUDGMENT SUMMARY

Does not apply. This is a dependency matter (RCW 13.34) and public funds are mandated.

II. BASIS

2.1 The Court appointed Guardian ad Litem has submitted an Order for payment of fees and it appears that it should be paid by the County and that the County as public funds are mandated by statute.

III. ORDER

3.1 The Grays Harbor County Auditor is directed to pay  
\$ 11,454.00 to Tamara J. Milligan Darst for ~~Guardian ad Litem~~ fees in this *full*  
action. *Tamara J. Milligan is discharged. attorney for parent*

DATED: 9.12.2011

[Signature]  
JUDGE

ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 1

*48.1*

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98561  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

1 Presented by:

2  
3 DARST LAW OFFICE  
4 Guardian ad Litem

5  
6 By 

7 Tamara J. Milligan  
8 WSBA #21801  
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ORDER FOR PAYMENT OF GUARDIAN AD  
LITEM FEES AND ESTABLISHING A  
JUDGMENT - 2

DARST LAW OFFICE  
109 EAST MARCY AVENUE  
MONTESANO, WASHINGTON 98563  
TELEPHONE 360.249.1979  
TELEFAX 360.249.1978

## ATTACHMENT E

FILED  
GRAYS HARBOR COUNTY  
C. BROWN, CLERK

2014 JUN 16 AM 11:03

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

IN RE THE DEPENDENCY OF:

NO. 05-7-00328-1

MELISSA MCCARTY

ORDER MAKING ATTORNEY FEES NULL  
AND VOID

X Clerk's Action Required

☒ On the motion of the COURT

IT IS ORDERED: The Order entered on September 12, 2011 ordering attorney fees is null and void. If Ms. Milliagn-Darst wishes for the court to entertain a request for attorney fees she can properly note it on the motion docket with supporting documentation of her hours.

Dated: 6/16/14

  
JUDGE

Presented by:

Approved for entry:

Attorney for: \_\_\_\_\_

Attorney for: \_\_\_\_\_

Approved for entry:

Approved for entry:

230

## ATTACHMENT F

FILED  
GRAYS HARBOR COUNTY  
C. BROWN, CLERK

2014 AUG -4 PM 1:49

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

IN RE THE DEPENDENCY OF:

NO. 05-7-00328-1

MELISSA MCCARTY

ORDER MAKING ATTORNEY FEES NULL  
AND VOID

X Clerk's Action Required

☒  
☐  
☐

On the motion of the COURT

By stipulation of the parties.

It appearing that the \_\_\_\_\_ has been duly served and is in default.

IT IS ORDERED: The order on the above cause number entered on September 12, 2011 ordering attorney fees is null and void. As directed in 2011, if Ms. Milligan-Darst wishes for the court to entertain a request for attorney fees she can properly note it on the motion docket with supporting documentation of her hours.

Dated: Aug 14, 2014

Presented by: \_\_\_\_\_

[Signature]  
JUDGE

Approved for entry: \_\_\_\_\_

Attorney for: \_\_\_\_\_

Attorney for: \_\_\_\_\_

235

## TILLER LAW OFFICE

**May 26, 2015 - 4:51 PM**

### Transmittal Letter

Document Uploaded: 6-465175-Appellant's Brief.pdf

Case Name: In re the Dependency of MM, BB, WM, and BH

Court of Appeals Case Number: 46517-5

**Is this a Personal Restraint Petition?** Yes ☐ No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Shirleen K Long - Email: [slong@tillerlaw.com](mailto:slong@tillerlaw.com)